IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 297 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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YUSUFKHAN ABDUL HAMIDKHAN PATHAN - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR MAHENDRA U VORA for MR NM KAPADIA for Appellant(s) : 1,
MR KT DAVE, Additional Public Prosecutor for

Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 08/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE K. A. PUJ)

1. The appellant – original accused No.2 has filed this appeal under Section-374(2) of the Criminal Procedure Code, 1973 (for short 'the Code') against the judgment and order of conviction and sentence dated 22.01.2002 rendered by the learned Additional City Civil & Sessions Judge, Ahmedabad, in Sessions Case No.113 of 2001 convicting the appellant – original accused No.2 for the offence punishable under Sections-8(c) read Section-21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and sentencing him to suffer R.I of 10 years with fine of Rs.1 lac (Rupees One Lac Only) and, in default of payment of fine further R.I of 1 year with a further direction that the period spent by him

in jail shall be given set off against the sentence.

2. Briefly stated, the prosecution case as disclosed from the complaint as well as unfolded during trial, is as under :-

3. The Police Inspector – K.C.Chudasama, on 12the June, 2001 at 10.30 hours, received a secret information through one informant regarding the alleged commission of offence and after following necessary formalities, a raiding party was organized and ultimately, on 12th June, 2001 at about 16:00 hours on the public road, opposite Hanjar Cinema, Saraspur, (1) Jayantilal Shukla (2) Yusufkhan Abdulhamidkhan Pathan and (3) Ganeshlal Ramlalji Gurjar were found and they were searched and from Yusufkhan Abdulhamidkhan Pathan – the appellant original accused No.2, the bag which he was holding in his hand, containing brown sugar, weighing 848 grams was found and no contraband material was found from other two accused persons, namely, (1) Jitendra, alias, Jitu Jayantilal Shukla – original accused

No.1 and Ganeshlal Ramlalji Gurjar – original accused No.3. Ultimately, all the said three accused persons were arrested by the Police Inspector, ATS, Gujarat State, Ahmedabad on 12th June, 2001. Thereafter, the Police Inspector – Shri A.S.Rathod. Unit No.2, Gujarat State, Ahmedabad lodged FIR on 12th June, 2001 at 16:00 hours before Shaher Kotada Police Station, Ahmedabad and Shaher Kotada Police registered the offences under Section-8(c) read with Section-21 of the NDPS Act vide CR No.Prohibition No.5152 of 2001 of Shaher Kotada Police Station on 12th June, 2001 at 16:00 hours against three persons and started investigation.

4. It also transpires from the record that thereafter appellant – original accused No.2 Yusufkhan Abdulhamidkhan Pathan from whose possession the contraband material was found, informed the police to the effect that he has obtained the said brown-sugar from one Gautam, whose father's name he did not know, through one Prem, who runs a private mini luxury bus. It also transpires from the record that on

the strength of the information supplied by co-accused - Yusufkhan Abdulhamidkhan Pathan and from whose possession contraband material was found, the said Gautam was also arrested by the police from his native place at village – Nimbod, Taluka, District – Mandsaur, M.P. On 16th June, 2001 at 14:00 hours.

5. After filing of the complaint, the investigation was put into motion. During the course of investigation, the muddamal was sent to FSL for analysis and Investigating Officer recorded the statements and on receipt of the report from the FSL certifying that the muddamal sent for analysis was brown-sugar and as incriminating evidence was found against the appellant – original accused No.2 and other accused Nos.1, 3 and 4. They were charge-sheeted before the learned Additional City Civil & Sessions Judge, Ahmedabad under Sections-8(c), 21 and 29 of the NDPS Act.

6. The learned Additional City Civil & Sessions Judge,

Ahmedabad, to whom the case was made over for trial, framed charge against the appellant – original accused No.2 and other 3 accused for commission of the offence punishable under Sections-8(c), 21 and 29 of the NDPS Act which was read over and explained to them. As the accused pleaded not guilty to the charge and claimed to be tried, they were put to trial and tried in Sessions Case No.113 of 2001.

7. During the course of trial, the accused No.4 has moved discharge application under Section-227 of the Code and the learned Principal Judge vide his order dated 27.9.2001 allowed the said application and discharged original accused No.4 from the charge of offences levelled against him.

8. To prove the culpability of the accused the prosecution has examined and relied upon the evidence of 10 witnesses, details of which are given in para-5 of the impugned judgment and order and the same are as under:-

Sr.No.	Particulars	Exh.No.	Page No.
1	P.W No.1 – Govindbhai S. Thakore	11	53-64
2	P.W No.2 – Arjunsinh S. Rathod.	21	65-82
3	P.W No.3 – Krushnkumar C. Chudasma.	27	83-104
4	P.W No.4 – Gauridut D. Sharma.	32	105-110
5	P.W No.5 – Ramanbhai Vrujlal.	36	111-114
6	P.W No.6 – Alibukux Umedbuksh.	39	115-120
7	P.W No.7 – Govindbhai Jinabhai.	42	121-124
8	P.W No.8 – Parag P. Vyas.	44	125-128
9	P.W No.9 – Abhaysinh D. Chundasma.	52	129-132
10	P.W. No.10 – Rameshbhai I. Patel.	54	133-138

9.To prove the case against the appellant – original accused No.2, the prosecution has also produced and relied upon number of documents, details of which are in para-5 of the impugned judgment and order, which are as under :-

Sr.No.	Particulars	Exh.No.	Page No.
1	Panchnama.	12	299-310
2	Resolution as required under Section-50 of the NDPS Act.	13	311-312
3	Resolution as required under Section-42 of the NDPS Act.	14	313-314
4	Slip duly signed by the panchas.	18	321-322

Sr.No.	Particulars	Exh.No.	Page No.
5	Slip duly signed by the panchas.	19	323-324
6	Slip duly signed by the panchas.	20	325-326
7	Complaint.	22	327-334
8	Extract from the movement register.	31	345-346
9	Yadi sent to FSL.	33	347-348
10	Preliminary report of the FSL Officer.	34	349-352
11	Weighing note of muddamal article.	37	357-358
12	Xerox copy of muddamal receipt.	40	361-366
13	Extract from the Station Diary.	41	367-370
14	Extract from anamati register.	43	371-378
15	Ravangi nondh sent to FSL	45	379-382
16	Receipt issued by FSL.	46	383-386
17	Report made to the Dy. Police Officer – Shri Chudasma.	53	393-394
18	FSL Report.	55	395-400

10. After recording of the evidence of the prosecution witnesses was over, the learned Additional City Civil & Sessions Judge, Ahmedabad, explained to the accused the circumstances appearing against them in the evidence of the prosecution witnesses and recorded their further statement under Section-313 of the Code. In their further statement, the accused have denied the case of the prosecution by

reiterating that they have been falsely implicated.

11. On appreciation, evaluation, analysis and close scrutiny of the evidence adduced by the prosecution, the learned Additional City Civil & Sessions Judge, Ahmedabad, has held that contraband article brown-sugar was recovered from the appellant – original accused No.2 and the prosecution has been able to establish that the complicity of accused for commission of the offences with which he was charged, has been proved beyond reasonable doubt, and therefore, he recorded the order of conviction and sentence against him to which reference is made in earlier paragraph of this judgment, giving rise to the instant appeal at the behest of the original accused.

12. Learned Additional City Civil & Sessions Judge, Ahmedabad has however acquitted the original accused Nos.1 and 3 from the charge of offence levelled against them.

13. Mr.N.M.Kapadia, learned advocate appearing for the appellant – original accused No.2 has taken us through the oral as well as documentary evidence which are on record and also assailed the judgment and order of the learned Additional City Civil & Sessions Judge, Ahmedabad dated 22.01.2002 rendered in Sessions Case No.113 of 2001. He has further submitted that the learned Additional City Civil & Sessions Judge, Ahmedabad has erred in convicting the appellant – original accused No.2 though there was no cogent or adequate evidence showing his guilt in the matter. He has further submitted that the learned Additional City Civil & Sessions Judge, Ahmedabad has failed to appreciate that the appellant – original accused No.2 is innocent and has not committed the alleged offence. He has further submitted that the evidence pressed into service by the prosecution is untrustworthy, unreliable and can never form basis of conviction.

14. Mr.Kapadia has further submitted that the prosecution has not complied with the provisions

contained in Section-42(2) of the NDPS Act. The information was not sent to the immediate superior officer within 72 hours, as required under this provision. He has further submitted that even the learned trial Judge has recorded this finding in para-31 of the impugned judgment and order. He has further submitted that Shri A.S.Rathod – P.W. No.2, Ex.21 has stated in his deposition that he had no personal knowledge about this. Even P.I. - Shri K. C. Chudasma – P.W. No.3 in his deposition has stated that he noted the information and informed higher officer in writing. However, in cross-examination he has stated that the time of information was not recorded and movement register was not kept secret. Mr.A.D. Chudasma – Dy. Superintendent of Police in his deposition at Ex.52 has also stated that no entry regarding secret report was made in the register or in any record, though received. On the basis of these infirmities, Mr.Kapadia has submitted that the prosecution has failed to establish the charge of offence levelled against the appellant – original accused No.2 and hence the appellant – original

accused No.2 deserves to be acquitted. For this purpose he relied on the decisions of the Hon'ble Supreme Court in the case of **Mohinder Kumar Vs. The State of Goa, reported in AIR 1995 SC 1157** and in the case of **State of Punjab Vs. Balbir Singh reported in AIR 1994 SC 1872**. He has also relied on the decision of this Court in the case of **Navinkumar Alias Shambhuprasad Alias Bapji Chimanlal Vyas Vs. State of Gujarat, reported in 2006(1) GLH 409**.

15. Mr.Kapadia has further submitted that the sample received by PSO was not sealed again and hence there was violation of provision contained in Section-55 of the NDPS Act. He submitted that the learned trial Judge has not given any finding with regard to non-compliance of this statutory provision. Mr.A.S.Rathod – P.W. No.2 in his deposition has not said anything about this. Similarly, Mr.K.C.Chudasma – P.W. No.3 has also not said anything about this. The Investigating Officer – Mr.R.I.Patel in his deposition at Ex.10 has admitted that there was no

seal of Shaher Kotda Police Station on the muddamal. Even PSO – Mr.Alibux – P.W. No.6 and Crime Writer – Govindbhai – P.W. No.7 have admitted the said default. He has, therefore, submitted that non-compliance of the provision contained in Section-55 of the NDPS Act renders the order of conviction and sentence passed against the appellant – original accused No.2 as nullity and hence it deserves to be quashed and set aside. He relied on the decision of Hon'ble Supreme Court **in the case of Gurubux Singh Vs. State of Haryana, reported in 2001(2) GLH 26**.

16. Mr.Kapadia has further submitted that the full report of arrest and seizure with all particulars were not sent and they were not received by immediate superior officer and hence there was violation of Section-57 of the NDPS Act. He has submitted that the learned trial Judge has recorded this finding in para-24 of the impugned judgment and order. Mr.A.S.Rathod – P.W. No.2 in his deposition at Ex.21 and Mr.K.C.Chudasma – P.W. No.3 in his deposition at

Ex.27 have admitted the said default. Since the compliance of provision contained in Section-57 is mandatory, the non-compliance thereof would vitiate the trial and the appellant – original accused No.2 deserves to be acquitted. For this purpose he relied on the decisions of the Hon'ble Supreme Court in the case of **Om Prakash Agarwal and others Vs. Batara Behera and others, reported in 1999(3) SCC 231**, in the case of **Gurubux Singh Vs. State of Haryana, reported in 2001(2) GLH 26** and in the case of **Ajitbhai Ismailbhai Pinjara Vs. State of Gujarat, reported in 2006(12) GHJ 84**.

17. Mr.Kapadia has further submitted that proper procedure for sealing of the muddamal has not been followed. No sing of the accused on the slip was found and sample was not obtained by FSL Officer in presence of the accused. The learned trial Judge has dealt with this issue in paras-20 and 21 of the impugned judgment and order. Mr.A.S.Rathod -P.W. No.2 in his deposition Ex.21 has not clarified that the seal was put up on the slip in a way that bag or

bottles can not be opened without tearing the slips. He has also not stated that the plastic bottles were wrapped with papers. Mr.K.C. Chudasma – P.W. No.3 has stated in his deposition that the plastic bottles were wrapped with paper, but he has not stated that the slip and seal were put up to avoid any tampering. The Investigating Officer – Mr.R.I.Patel Ex.10 has stated in his deposition Ex.34 that he did not receive any seal from the Shaher Kotda Police Station and did not know with whom the seal was lying. PSO – Mr.Alibux – P.W. No.6 in his deposition, Ex.39 has stated that he received muddamal weighing about 848 grams instead of 838 grams. He has further stated that the sample was in a sealed box instead of in paper or bottles and did not state that he received two samples. Mr.Govindbhai – P.W. No.7 in his deposition Ex.42 has stated that he received 4 packets in sealed condition and, thereafter, he changed the version that he received the 3 packets in sealed condition and one without seal. He has not stated as to which particular muddamal was sent to FSL. FSL Report says that there were 3 seals on the

parcel of clothes, in each there was white paper wrapped on plastic bottle whereas the muddamal receipt Ex.40 does not refer to clothes or papers. Because of these discrepancies Mr.Kapadia has submitted that there was defective sealing procedure and there was all possibility of tampering with the samples. He has, therefore, submitted that the appellant – original accused No.2 cannot be convicted merely on the basis of FSL Report. For this purpose he relied on the decision of this Court in the case of **Navinkumar Alias Shambhuprasad Alias Bapji Chimanlal Vyas Vs. State of Gujarat, reported in 2006(1) GLH 409.**

18. Mr.Kapadia has further submitted that though the FSL report is exhibited, as Ex.55 no FSL officer was examined to prove the said document and it is produced by the Investigating Officer – Mr.R.I.Patel, who is party to the raid. He has further submitted that looking to the further statement under Section-313 of the Criminal Procedure Code it is mechanically recorded. He has further submitted that the seized

muddamal was produced in the Court after about 45 days. No independent witnesses were joined in the raid and they have not been examined as witnesses. He has also submitted that the provisions contained in Section-50 of the NDPS Act have not been complied with.

19. In view of the above factual background and for non-compliance of the statutory provisions and keeping in mind the judicial pronouncements on the issues raised, Mr. Kapadia has strongly urged that no other finding except acquittal of the appellant – original accused No.2 from the charges levelled against him would meet with the ends of justice.

20. Mr. K. T. Dave, learned Additional Public Prosecutor, on the other hand has supported the order and judgment of the learned Additional City Civil & Sessions Judge, Ahmedabad and submitted that there was no violation of any statutory provision and all necessary compliances were made by the raiding parties and/or investigating agency and there

was no substance in the argument that the statutory provisions were violated. So far as sealing procedure is concerned, Mr. Dave has relied on the decision of the Hon'ble Supreme Court in the case of **Babubhai Odhavji Patel and Others V/s. State of Gujarat, 2005 (8) SCC 725** and submitted that there was no violation of the sealing procedure and it was properly followed by the raiding party and/or Investigating Agency and the conviction of the appellant – original accused cannot be disturbed on this ground.

21. Mr. Dave has further submitted that the prosecution has clearly established beyond reasonable doubt the charges against the appellant – original accused No.2. He has further submitted that it is true that the prosecution case is merely based on the testimonies of the members of the raiding party consisting of the Police Officers and there is no independent corroboration to support the prosecution version. However, absence of independent corroboration and independent support would not render the prosecution version to be unacceptable in light of the

settled legal position. He has further submitted that the documentary evidence on the record of the proceedings clearly establish the involvement, presence and role of the appellant – original accused No.2 in the offences charged with. He has further submitted that all the mandatory provisions contained in the Act have been fully complied with by the members of the raiding party and, therefore, the prosecution having clearly established beyond reasonable doubt the guilt of the appellant – original accused No.2, the conviction order passed by the learned Additional City Civil & Sessions Judge, Ahmedabad is required to be upheld.

22. We have considered the submissions advanced by Mr. N.M.Kapadia, learned advocate appearing for the appellant - original accused No.2 and Mr. K.T.Dave, learned Additional Public Prosecutor, appearing for the State of Gujarat at length. We have also undertaken a complete and comprehensive exercise of appreciating all vital features of the case and the entire evidence on record with reference to broad and

reasonable probabilities of the case. We have also gone through the entire testimonial collections. We have applied our mind to the impugned judgment and order passed by the learned Additional City Civil & Sessions Judge, Ahmedabad convicting the appellant accused No.2 and sentencing him for R.I of 10 years and fine of Rs.1 lac each and in default thereof, to undergo further R.I of 1 year.

23. In order to find out whether the prosecution has established the charge against the appellant – original accused No.2 beyond reasonable doubt and whether the learned Additional City Civil & Sessions Judge, Ahmedabad has recorded a just and correct conclusion holding the appellant – original accused No.2 guilty, we may first advert to the oral testimony of the prosecution witnesses.

P.W. No.1 - G.S.Thakore is panch witness. He has supported the case of prosecution. He confirmed the due compliance of Section-50 of the Act and further confirmed that proper sealing procedure was followed. He withstood the cross-examination made

by the learned advocate of the appellant – original accused No.2.

P.W. No.2 – A.S.Rathod was P.I in Action Taking Squad on 12.6.2001. He testified in his deposition that P.S.I Mr.K.C.Chudasma received the secret information and he communicated the said information to Dy. Superintendent of Police Mr.A.D.Chudasma. He further deposed about drawing of panchnama, compliance of Section-50, sealing of muddamal etc. He also withstood the rigour of cross-examination.

P.W. No.3 – Mr.K.C.Chudasma was P.I in Action Taking Squad on 12.6.2001. He testified that he received the secret information, made an entry and communicated to his superior official. He testified that necessary resolutions for due compliance of Section-42 and 50 were passed. He has further deposed about the sealing procedure followed by the raiding party which clearly indicates that slips duly signed by panchas and police officer were kept on the top of the packets and seal was affixed thereon.

P.W.No.4 – Mr.G.D.Sharma is scientific officer in

FSL. He was the member of raiding party. He made the primary analysis of contraband articles.

P.W. No.5 – Ramanlal Vrajlal has deposed that he has weighed the contraband articles.

P.W. No.6 – Mr.Alibux is PSO and he deposed that he received muddamal article, he made the entry in station diary, registered the offence on the basis of report and complaint.

P.W. No.7 – Mr.Govindbhai Jinabhai is writer-head. He handed over the sample to P.W. No.8 – Mr.Parag P. Vyas for its delivery to FSL. P.W. No.9 – Mr.A.D.Chudasma is Dy. Superintendent of Police. He testified in his deposition that he received the report of secret information in writing and he sent the said report to D.I.G. Complaint, panchnama and FSL report supports the case of prosecution.

24. From the evidence of the above mentioned witnesses examined by the prosecution, it is seen that they have testified before the Court as to what role they played in the raid. They also testified with regard to

compliance of Sections 42, 43, 50, 55 and 57 of the NDPS Act.

25. So far as the statutory provisions contained under Section 42 (1) of the NDPS Act is concerned, it deals with power of entry, search, seizure and arrest without warrant or authorization in a building, conveyance or enclosed place, between sunrise and sunset. So far as Section 42 (2) of the NDPS Act is concerned, it provides that where an officer takes down any information in writing under sub-section (1) of section 42 of the NDPS Act or records grounds for his belief under the provisos thereto, he shall forthwith send a copy thereof to his immediate official superior.

26. Section 43 of the NDPS Act provides for Power of seizure and arrest in public places. The accused were intercepted and caught hold at the place opposite to Hanjar Cinema,

Saraspur, Ahmedabad which is a public place and, therefore, in the instant case, admittedly Section 43 of the NDPS Act has to be invoked and not Section 42 of the NDPS Act.

27. In the case of **State of Punjab v. Balbirsingh, AIR 1994 SC 1872**, the Supreme Court has observed that Section 43 which deals with the power of seizure and arrest in public places is slightly different from section 42 of the NDPS Act in certain respects. The empowered officer while acting under section 43, need not record any reasons of his belief. Section 43 also does not mention anything about the empowered officer having prior information given by any person or about recording the same, as compared to section 42. A similar view is expressed by this court in the case of **State of Gujarat v. Abdul Rasid Ibrahim Mansuri, 1991 Drugs Cases 1 (Gujarat)**. In the said case the prosecution

case was that the accused was found at public premises. At the same time, it was not the defence of the accused that he was at some place other than public premises. So legal position is clear that section 43 of the NDPS Act would be applicable to the facts of that case.

28. In view of the aforesaid clear elucidation of the Supreme Court and this Court as well as testimonies, in instant case, provisions of Section 43 would be applied as the raid was carried out at a public place. Notwithstanding the aforementioned legal position, the secret information was reduced into writing and it was immediately communicated to the official superior as can be reflected from the documentary evidence on record. Therefore, the compliance of the mandatory provisions of section 42 of the NDPS Act though not required, they have been fully complied with.

29. So far as the compliance of the mandatory provisions of Section 50 of the NDPS Act is concerned, the evidence is consistent. At the time of interception and raid, the Mr.P.I.Chudasma had informed the accused that if they so desired, they could be searched in presence of a gazetted officer or a magistrate or if they desired that they may be searched by him, then he will search them and the option was left to the accused and the accused preferred the second option and volunteered to be searched by him. Therefore, Mr.Chudasma, in presence of the panchas and other police personnels who were members of the raiding party, searched the person of the accused and during the search he found contraband article from the accused.

30. So far as the journey of the muddamal from the stage of interception of the accused, search of the person of the accused and

seizure and sealing of contraband article till it reached FSL Ahmedabad has also been duly proved and all the witnesses, in this regard, are consistent. As per the said evidence, the muddamal was not tampered with at any stage and it reached FSL Ahmedabad intact in sealed condition. The procedure for sealing was done as per the practice adopted by the police in NDPS cases. FSL report at Ex.55, at pages 395-400, clearly shows that the muddamal was sealed and in intact condition. It is also clear from the FSL report that it was received by FSL intact in sealed condition and on analysis of the muddamal it was found to be brown-sugar. Therefore, during journey of the muddamal from seizure and sealing till it reached FSL Ahmedabad for analysis there was no question of tampering with the said muddamal.

31. Independently this court has also perused the documents on record and from the perusal

of the same it is clear that the raiding party and/or Investigating Officer, has strictly followed the mandatory and statutory provisions contained under the NDPS Act and no discrepancy could be noticed by this court on the part of raiding party and/or Investigating Officer with regard to compliance of the provisions of NDPS Act.

32. On overall view of the matter, according to this Court, the mandatory and statutory provisions contained under Sections 42 (1), 42 (2), 43, 50, 55 and 57 of the NDPS Act have been adhered to and complied with by raiding party and/or Investigating Officer, and it is duly proved by the evidence of the prosecution witnesses. Raiding party and/or Investigating Officer, had taken utmost care and caution while seizing and sealing the said contraband article. The apprehension of tampering with the muddamal can be ruled out as from the stage of recovery of the muddamal

till its reaching the FSL, proper care and caution was taken by the police personnel. It is on the contrary clearly proved that it was in the safe hands of police personnel and it reached at FSL intact in sealed condition for chemical analysis.

33. In view of the aforesaid evidence, there is no manner of doubt that when the accused No.2 was intercepted, apprehended and searched, he was found in possession of contraband article brown-sugar. Necessary formalities of search and seizure were complied with in presence of panchas and the statutory requirements and formalities contained under the NDPS Act were followed and the sample was sent to FSL Ahmedabad for analysis after following the procedures under the NDPS Act.

34. On close scrutiny of the evidence on record, we find no infirmities in the

findings, ultimate conclusion and the resultant order of conviction and sentence recorded by the trial court. We are in complete agreement with the said findings, ultimate conclusion and resultant order of conviction and sentence passed by the trial court, as according to us, no other conclusion is possible except the one reached by the trial court in the facts and circumstances of the case.

35. In view of above, none of the arguments canvassed by Mr.Kapadia, convinced us to take any different view. The authorities cited by him do not render any assistance to this case. The evidence has been carefully analyzed and fully appreciated in the closely reasoned judgment with which we fully concur. We do not think it right to invest more time in reiterating the same reasoning in our language or giving the same answers to the same criticism in our own words for the sake

of brevity.

36. In aforesaid view of the matter, there is no reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence. The sentence awarded to the accused is minimum and has to be maintained.

37. On the wake up of the aforesaid, we are not inclined to interfere with the judgment and order of conviction and sentence recorded by the trial court and as the appeal lacks merit, it deserves to be dismissed. However, looking to the facts and circumstances of the case, we reduce default sentence imposed by the trial Court for 1 year to 6 months.

38. For the foregoing reasons, and subject to the above modification in default sentence the appeal fails and accordingly it is

dismissed.

[A. M. KAPADIA, J.] [K.A. PUJ, J.]

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